

[Mr. BAUCUS] was added as a cosponsor of S. 227, a bill to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions and for other purposes.

S. 383

At the request of Mr. WARNER, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 383, a bill to provide for the establishment of policy on the deployment by the United States of an antiballistic missile system and of advanced theater missile defense systems.

S. 388

At the request of Ms. SNOWE, the names of the Senator from Montana [Mr. BURNS] the Senator from Wisconsin [Mr. FEINGOLD], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 511

At the request of Mr. DOMENICI, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 511, a bill to require the periodic review and automatic termination of Federal regulations.

S. 578

At the request of Mr. D'AMATO, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 578, a bill to limit assistance for Turkey under the Foreign Assistance Act of 1961 and the Arms Export Control Act until that country complies with certain human rights standards.

S. 637

At the request of Mr. MCCAIN, the names of the Senator from Michigan [Mr. ABRAHAM] and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of S. 637, a bill to remove barriers to interracial and interethnic adoptions, and for other purposes.

SENATE JOINT RESOLUTION 31

At the request of Mr. HATCH, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of Senate Joint Resolution 31, a joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

AMENDMENTS SUBMITTED

THE COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995 COMMON SENSE PRODUCT LIABILITY REFORM ACT OF 1995

DOLE (AND OTHERS) AMENDMENT NO. 617

Mr. DOLE (for himself, Mr. EXON, Mr. HATCH, Ms. SNOWE, Mr. MCCONNELL, Mr. ABRAHAM, Mr. KYL, Mr. THOMAS, Mrs. HUTCHISON, Mr. GRAMM) proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

On page 19, strike line 12 through line 5 on page 21, and insert the following:

SEC. 107. PUNITIVE DAMAGES IN CIVIL ACTIONS.

(a) FINDINGS.—The Congress finds that—

(1) punitive damages are imposed pursuant to vague, subjective, and often retrospective standards of liability, and these standards vary from State to State;

(2) the magnitude and unpredictability of punitive damage awards in civil actions have increased dramatically over the last 40 years, unreasonably inflating the cost of settling litigation, and discouraging socially useful and productive activity;

(3) excessive, arbitrary, and unpredictable punitive damage awards impair and burden commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and non-profit entities;

(4) products and services originating in a State with reasonable punitive damage provisions are still subject to excessive punitive damage awards because claimants have an economic incentive to bring suit in States in which punitive damage awards are arbitrary and inadequately controlled;

(5) because of the national scope of the problems created by excessive, arbitrary, and unpredictable punitive damage awards, it is not possible for the several States to enact laws that fully and effectively respond to the national economic and constitutional problems created by punitive damages; and

(6) the Supreme Court of the United States has recognized that punitive damages can produce grossly excessive, wholly unreasonable, and often arbitrary punishment, and therefore raise serious constitutional due process concerns.

(b) GENERAL RULE.—Notwithstanding any other provision of this Act, in any civil action whose subject matter affects commerce brought in any Federal or State court on any theory, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant only if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct by the defendant that was either—

(1) specifically intended to cause harm; or

(2) carried out with conscious, flagrant disregard to the rights or safety of others.

(c) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded to a claimant in any civil action subject to this section shall not exceed 2 times the sum of—

(1) the amount awarded to the claimant for economic loss; and

(2) the amount awarded to the claimant for noneconomic loss.

This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such an award. If a separate proceeding is requested—

(1) evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded; and

(2) evidence admissible in the punitive damages proceeding may include evidence of the defendant's profits, if any, from its alleged wrongdoing.

(e) APPLICABILITY.—Nothing in this section shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by the United States, or by any State, under any law;

(2) create any cause of action or any right to punitive damages;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the availability or amount of punitive damages;

(5) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(6) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(7) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(f) FEDERAL CAUSE OF ACTION PRECLUDED.—Nothing in this section shall confer jurisdiction on the Federal district courts of the United States under section 1331 or 1337 of title 28, United States Code, over any civil action covered under this section.

(g) DEFINITIONS.—For purposes of this section:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) The term "clear and convincing evidence" means that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard shall be more than that required under preponderance of the evidence, and less than that required for proof beyond a reasonable doubt.

(3) The term "commerce" means commerce between or among the several States, or with foreign nations.

(4)(A) The term "economic loss" means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of replacement services in the home, including child care, transportation, food preparation, and household care, costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term "economic loss" shall not include noneconomic loss.

(5) The term "harm" means any legally cognizable wrong or injury for which damages may be imposed.

(6)(A) The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(B) The term "noneconomic loss" shall not include economic loss or punitive damages.

(7) The term "punitive damages" means damages awarded against any person or entity to punish such person or entity or to deter such person or entity, or others, from engaging in similar behavior in the future.

(8) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

(h) **EFFECTIVE DATE.**—This section shall apply to any civil action in which trial has not commenced before the date of enactment of this Act.

THOMPSON (AND OTHERS) AMENDMENT NO 618

(Ordered to lie on the table.)

Mr. THOMPSON (for himself, Mr. COCHRAN, and Mr. SIMON) submitted an amendment intended to be proposed by them to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

In section 102(a)(1), after "commenced" insert the following: "in a Federal court pursuant to section 1332 of title 28, United States Code, or removed to a Federal court pursuant to chapter 89 of such title".

In section 102(c)(6), strike "or" at the end.

In section 102(c)(7), strike the period at the end and insert "; or".

In section 102(c), add the following new paragraph:

(8) create a cause of action or provide for jurisdiction by a Federal Court under section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

• Mr. THOMPSON. Mr. President, I submit on behalf of myself and Senators COCHRAN and SIMON an amendment that would limit applicability of the product liability to cases in federal court.

As currently before the Senate, H.R. 956 would seriously jeopardize the balance between state and federal governments that the Founding Fathers established in the Constitution. States have had responsibility for developing their own rules of tort law—free of federal interference—for more than 200 years. In an unprecedented fashion, the product liability bill would displace state law governing an area always reserved to the states, even when the case is brought in state court. I am troubled by a Washington knows best approach to product liability.

Even worse, the displacement of state law is selective. H.R. 956 prevents states from providing less protection to defendants, but not from providing more. This one-size-fits-all bill overlooks both that individual Americans are unique and that states have their

own right to determine the law that should apply to their special situations.

The bill raises federalism problems in a very practical sense. Because state law would still govern many aspects of product liability law under H.R. 956, there would be numerous questions to litigate concerning the relationship between the federal law and existing state laws. New, different, and inconsistent interpretations of the federal law and the state laws would result. Under the bill, resolution of these issues would be provided from a federal court of appeals. Those courts, not state courts, would ultimately determine the scope and meaning of state law as it interacts with this bill. Moreover, those appeals courts would be deluged with litigation at a time when years elapse before trial of a civil case in federal court, and when Americans rightly demand that federal courts apply swift and certain justice in criminal cases.

By contrast, my amendment recognizes that interstate commerce is the justification for a federal product liability bill. It is interstate commerce that justifies federal court jurisdiction in cases brought by citizens of one state against citizens of another. I believe that the rationale of the bill corresponds precisely with the reasons underlying federal diversity jurisdiction.

Despite the claims made, no one truly knows the effect of this bill on the ability of injured Americans to recover adequate compensation for injuries caused by defective products. Nor will anyone know whether competitiveness of American business will be enhanced or whether insurance premiums will fall if H.R. 956 is enacted. At the same time, the bill would displace 200 years of law based on actual experience. If the bill failed to achieve its objectives, there would be almost no means of unscrambling the federalized egg. By contrast, applying the bill only to federal court cases would provide an opportunity to experiment. If H.R. 956's ideas work, states can adopt these rules as their own. Potentially, a preemptive approach might then make sense. But if the bill created numerous practical problems, well-tested state law would remain undisturbed while Congress acted to fix the problems in the federal law.

The practical effect of my amendment would be that defendants sued out of state in many instances would be able to remove their cases to federal court and obtain the federal rule. Defendants sued in their home state would not be able to remove the case to federal court. Thus, those defendants would be governed by their own state law as applied by their own state court. I believe this is to be a much more sensible approach than the one now before the Senate, and one consistent with the federal system the Constitution created. •

DORGAN AMENDMENT NO. 619

Mr. DORGAN proposed an amendment to amendment No. 617 proposed by Mr. DOLE to amendment No. 596 proposed by Mr. GORTON to the bill, H.R. 965, supra; as follows:

On page 1, beginning with line 3, strike through line 2 on page 8 and insert the following:

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

"(a) **GENERAL RULE.**—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

"(b) **BIFURCATION AT REQUEST OF EITHER PARTY.**—At the request of either party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award."

SNOWE AMENDMENT NO. 620

Mr. GORTON (for Ms. SNOWE) proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

On page 19 strike line 22 through page 20 line 4 and insert the following new subsection:

(b) **LIMITATION ON AMOUNT.**—

(1) **IN GENERAL.**—The amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) **APPLICATION BY COURT.**—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

SHELBY (AND HEFLIN) AMENDMENT NO. 621

Mr. SHELBY (for himself and Mr. HEFLIN) proposed an amendment to amendment No. 617 proposed by Mr. DOLE to amendment No. 596 proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place insert the following:

SEC. . **LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.**

In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

DEWINE (AND ABRAHAM) AMENDMENT NO. 622

Mr. DEWINE (for himself and Mr. ABRAHAM) proposed an amendment to amendment No. 617 proposed by Mr. DOLE to amendment No. 596 proposed

by Mr. GORTON to the bill H.R. 956, supra; as follows:

On page 3 line 23, strike "loss; and insert in lieu thereof: "loss;

except that if the award is against an individual whose net worth does not exceed \$500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government or organization which has fewer than twenty-five full-time employees, that amount shall not exceed \$250,000."

DEWINE AMENDMENT NO. 623

Mr. DEWINE proposed an amendment to amendment no. 617 proposed by Mr. DOLE to amendment no. 596 proposed by Mr. GORTON to the bill, H.R. 965, supra; as follows:

On page 4 line 11 strike the semicolon after the word "awarded" through line 15 and insert a period.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, May 2, 1995, at 3 p.m. in open session, to consider the nominations of Gen. Dennis J. Reimer, USA to be Chief of Staff of the Army, and for reappointment to the grade of General; and Lt. Gen. Charles C. Krulak, USMC to be Commandant of the Marine Corps, and for appointment to the grade of General.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 2, 1995, immediately following the first Roll Call vote to hold a business meeting to vote on pending items.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GORTON. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet at 10 a.m., during the session of the Senate on Tuesday, May 2, 1995 to hold hearings on the Navy T-AO-187 Kaiser Class Oiler Contract.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, May 2, 1995, beginning at 9:30 a.m., in room 485 of the Russell Senate Office Building on the implementation of the Tribal Self-Governance Demonstration Project authorities by the Indian Health Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Com-

mittee on Labor and Human Resources be authorized to meet for a hearing on the Nomination of Dr. Henry Foster, during the session of the Senate on Tuesday, May 2, 1995 at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the courts, U.S. Senate Committee on the Judiciary, be authorized to meet during a session of the Senate on Tuesday, May 2, 1995, at 9:00 a.m., in Senate Dirksen Room 226, on the costs of the legal system.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND REGULATORY RELIEF

Mr. GORTON. Mr. President, I ask unanimous consent that Subcommittee on Financial Institutions and Regulatory Relief, of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, May 2, 1995, to conduct a hearing on S. 650, The Economic Growth and Regulatory Paperwork Reduction Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet on Tuesday, May 2, 1995 at 9:30 a.m. in open session to receive testimony on the space programs in review of the Defense authorization request for fiscal year 1996 and the future years defense program, and to review the Department of Defense's space management initiative.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

JAMES D. HENRY, MISSOURI SMALL BUSINESS PERSON OF 1995

• Mr. BOND. Mr. President, it is with great pleasure that I recognize Jim Henry as Missouri's Small Business Person of the Year for 1995. Jim Henry is the president and chief operating officer of the R.C. Wilson Co., located in St. Charles.

In years to come, we may refer back to 1995 as the year of small business owners. More attention is being given to the accomplishments of small business persons than at any time since I entered government service. Small businesses will create 66 percent of all new jobs this year. By contrast, large companies with over 5,000 employees will add only 6 percent of the new jobs. Small businesses are the engine that is fueling our economy, generating 52 percent of all sales and one-half of the gross domestic product. It is, therefore,

very appropriate that the Small Business Administration has set aside this week to honor our Nation's men and women, like Jim Henry, who own and operate small businesses.

Jim Henry's business, the R.C. Wilson Co., is a collection agency. Most of us think of a collection business as one that is insensitive at best. However, since Mr. Henry purchased the company in 1985, he has worked hard to establish a level of excellence that is essential for success in today's competitive business environment. His business philosophy puts a special emphasis on the dignity of the consumer, and provides professional service and outstanding results while maintaining the fine image of the client.

Jim Henry has been an innovator. Over the past 10 years, he has expanded and enhanced the delinquent-account collection services by fully computerizing his agency. He added optical-disk storage and on-line capability with clients. He has recognized the tremendous changes in the work place by adding on-line connections for employees working from home. His business was the first of its kind in Missouri to add a computerized dialing system.

In 1985, the R.C. Wilson Co. employed 25 people with annual billings of \$1.25 million. Today, Jim Henry has 114 employees and bills \$4 million a year. His success rate is nearly 50 percent better than the industry average.

Jim Henry has succeeded by recognizing the needs of his customers and clients, by working hard and by being innovative. Equally significant, Jim Henry has never forgotten his employees, many have been with the company for over 20 years. He has shown us how to be an excellent businessman and employer, and I am proud to recognize Jim Henry as Missouri's 1995 Small Business Person of the Year.●

TRIBUTE TO STEVE WITTMAN

• Mr. FEINGOLD. Mr. President, true pioneers are rare and special individuals. They inspire us with their vision, their energy, their skill and their ability to lead.

Today I am sad to report the passing of one such pioneer, the legendary aviator Sylvester Joseph Wittman. Mr. Wittman and his wife, Paula, died in an airplane crash on Sand Mountain, in northeastern Alabama last Thursday night. They were flying in an airplane that Mr. Wittman had designed and built from their winter home in Ocala, Florida to their home in Oshkosh, Wisconsin when the accident occurred.

Many successful people like to go by the book. Steve Wittman, as he preferred to be called, helped write the book. His life practically traced the history of aviation. He took wing in the spit-and-bailing-wire era and never stopped contributing to his beloved calling even as we began flying farther,